

Jan 25, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

AMY ROUSE,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

No. 1:17-CV-3031-JTR

ORDER GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

**BEFORE THE COURT** are cross-motions for summary judgment. ECF No. 14, 15. Attorney Cory J. Brandt represents Amy Rouse (Plaintiff); Special Assistant United States Attorney Leisa A. Wolf represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 7. After reviewing the administrative record and briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

**JURISDICTION**

Plaintiff filed applications for disability insurance benefits and supplemental security income on April 20, 2011, alleging disability since January 1, 2009, due to PTSD, severe depression and panic attacks. Tr. 218, 225, 262. Plaintiff's applications were denied initially and upon reconsideration.

Administrative Law Judge (ALJ) Kimberly Boyce held hearings on April 8, 2013, and September 11, 2013, Tr. 51-87, and issued an unfavorable decision on October 17, 2013, Tr. 10-23. The Appeals Council denied review on March 17,

1 2015. Tr. 1-4. The ALJ's October 2013 decision was then appealed to the United  
2 States District Court. Tr. 609. On December 18, 2015, Chief Judge Rice issued an  
3 order remanding the matter for additional proceedings. Tr. 612-625. ALJ Boyce  
4 held a *de novo* hearing on May 4, 2016, Tr. 554-579, and issued another  
5 unfavorable decision on November 21, 2016, Tr. 509-519. The ALJ's November  
6 2016 decision thus became the final decision of the Commissioner which is  
7 appealable to the district court. 20 C.F.R. § 404.984(a). Plaintiff filed this action  
8 for judicial review on February 16, 2017. ECF No. 1, 4.

### 9 **STATEMENT OF FACTS**

10 The facts of the case are set forth in the administrative hearing transcript, the  
11 ALJ's decision, and the briefs of the parties. They are only briefly summarized  
12 here.

13 Plaintiff was born on January 27, 1977, and was 31 years old on the alleged  
14 onset date, January 1, 2009. Tr. 65, 218, 225. She obtained a GED at age 19 and  
15 earned a certification in phlebotomy in 2000. Tr. 66. Plaintiff testified at the  
16 September 2013 administrative hearing that she got married in May of 2010 and  
17 resided in a home with her husband and two youngest children, ages six months  
18 and two. Tr. 67-69. Plaintiff's husband worked Monday through Friday or  
19 Saturday, from 8:30 a.m. to 5:00 p.m., and Plaintiff cared for her young children  
20 during those times. Tr. 69. Plaintiff also has two older children, ages 17 and 14 at  
21 the time of the September 2013 administrative hearing, but those children were  
22 being taken care of by her sister. Tr. 75.

23 Plaintiff's disability report indicates she stopped working on June 4, 2009  
24 because of her condition.<sup>1</sup> Tr. 262. When asked why she believed she could not  
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26 <sup>1</sup>Plaintiff's mother reported that Plaintiff began counseling for depression at  
27 age 12 (1989) and had drug abuse issues, including methamphetamine use, in her  
28 late teens. Tr. 324. In 2000, Plaintiff was admitted to a long term drug treatment

1 work, Plaintiff testified she had difficulty leaving her house and being around  
2 people. Tr. 72. With respect to her last job, she indicated she just got to a point  
3 where she was not able to perform the work; stating “it just didn’t work out.” Tr.  
4 77. She described having panic attacks on the job and an inability to calm down.  
5 Tr. 77. Plaintiff also testified she has difficulty organizing her thoughts and  
6 completing tasks, experienced disturbed sleep, and had low energy. Tr. 80-81,  
7 572.

8 Plaintiff stated she has been in counseling for a long time (off and on for 10  
9 years) and was on medication for her symptoms. Tr. 73. However, she indicated  
10 at the September 2013 administrative hearing that she had not attended counseling  
11 for about 18 months, Tr. 72, and, at the May 2016 administrative hearing, that she  
12 had not seen a therapist for her PTSD since 2011, Tr. 560. Plaintiff stated she had  
13 been seeing her family practitioner, Dr. Twe, once every three months for her  
14 symptoms. Tr. 561.

### 15 STANDARD OF REVIEW

16 The ALJ is responsible for determining credibility, resolving conflicts in  
17 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
18 1039 (9th Cir. 1995). The ALJ’s determinations of law are reviewed *de novo*, with  
19 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,  
20 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed  
21 only if it is not supported by substantial evidence or if it is based on legal error.  
22 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is

23 \_\_\_\_\_  
24 center and subsequently obtained sobriety. Tr. 324. On November 24, 2000,  
25 Plaintiff was attacked in her apartment by a male friend. Tr. 324-325. Plaintiff  
26 was stabbed 23 times, sustained broken facial bones, and injured her eye and right  
27 hand in the attack. Tr. 325. Plaintiff’s mother indicated that, following the attack,  
28 Plaintiff has had significant issues with anxiety, depression and PTSD. Tr. 325.

1 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at  
2 1098. Put another way, substantial evidence is such relevant evidence as a  
3 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*  
4 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one  
5 rational interpretation, the Court may not substitute its judgment for that of the  
6 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,  
7 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the  
8 administrative findings, or if conflicting evidence supports a finding of either  
9 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*  
10 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision  
11 supported by substantial evidence will be set aside if the proper legal standards  
12 were not applied in weighing the evidence and making the decision. *Browner v.*  
13 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

#### 14 **SEQUENTIAL EVALUATION PROCESS**

15 The Commissioner has established a five-step sequential evaluation process  
16 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),  
17 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through  
18 four, the burden of proof rests upon the claimant to establish a prima facie case of  
19 entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is  
20 met once a claimant establishes that a physical or mental impairment prevents the  
21 claimant from engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4),  
22 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds  
23 to step five, and the burden shifts to the Commissioner to show that (1) the  
24 claimant can make an adjustment to other work; and (2) specific jobs exist in the  
25 national economy which claimant can perform. *Batson v. Commissioner of Social*  
26 *Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make an  
27 adjustment to other work in the national economy, a finding of "disabled" is made.  
28 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).



1 from January 1, 2009, the alleged onset date, through the date of the ALJ's  
2 decision, November 21, 2016. Tr. 519.

### 3 ISSUES

4 The question presented is whether substantial evidence supports the ALJ's  
5 decision denying benefits and, if so, whether that decision is based on proper legal  
6 standards. Plaintiff contends the ALJ erred in this case by (1) improperly rejecting  
7 the opinions of her treating physician, Sui M. Twe, M.D.; (2) improperly rejecting  
8 Plaintiff's subjective complaints; and (3) relying on an incomplete hypothetical at  
9 step five of the sequential evaluation process. ECF No. 14 at 8-17.

### 10 DISCUSSION

#### 11 A. Sui M. Twe, M.D.

12 Plaintiff first contends the ALJ erred by improperly rejecting the opinions of  
13 her treating physician, Sui M. Twe, M.D. ECF No. 14 at 8-12.

14 If the opinion of a treating physician is not contradicted, it can only be  
15 rejected with clear and convincing reasons. *Lester*, 81 F.3d at 830. If contradicted,  
16 the opinion can be rejected for "specific" and "legitimate" reasons that are  
17 supported by substantial evidence in the record. *Andrews*, 53 F.3d at 1043.  
18 Historically, the courts have recognized conflicting medical evidence, the absence  
19 of regular medical treatment during the alleged period of disability, and the lack of  
20 medical support for doctors' reports based substantially on a claimant's subjective  
21 complaints of pain as specific, legitimate reasons for disregarding an examining or  
22 treating physician's opinion. *Flaten v. Secretary of Health and Human Servs.*, 44  
23 F.3d 1453, 1463-1464 (9th Cir. 1995); *Fair*, 885 F.2d at 604.

24 Here, Dr. Twe's opinions were contradicted by other medical sources of  
25 record, including state agency reviewing physicians, Tr. 97-98 & 123-124 (John D.  
26 Gilbert, Ph.D., and Steven Haney, M.D., indicating Plaintiff was capable of  
27 performing simple, repetitive work involving limited contact with the public and  
28 co-workers); Crystal Coffey, Pharm. D., of Central Washington Comprehensive

1 Mental Health, Tr. 344, 426-428, 433-436 (consistently noting no impairment of  
2 memory or intellectual functioning and fair to good insight and judgment); and  
3 Roland Dougherty, Ph.D., Tr. 472-478 (finding Plaintiff's prognosis to be fair and  
4 dependent upon her sustained use of counseling resources and that she should be  
5 able to understand, remember and follow simple directions though some  
6 concentration problems were likely). Therefore, the ALJ needed to only provide  
7 specific and legitimate reasons for rejecting the opinions of Dr. Twe.

8 On March 7, 2011, Dr. Twe opined that Plaintiff, who was pregnant at the  
9 time, was limited to sedentary work. Tr. 332. On August 14, 2013, Dr. Twe filled  
10 out a "Medical Report" form indicating Plaintiff was not capable of performing  
11 any work at the time due to her symptoms and that Plaintiff's limitations had  
12 existed since at least 2004. Tr. 496. Dr. Twe also marked that work on a regular  
13 and continuous basis would cause Plaintiff's condition to deteriorate. Tr. 496. Dr.  
14 Twe filed out a "Mental Medical Source Statement" form at that time which found  
15 Plaintiff "markedly limited" (very significant interference with basic work-related  
16 activities) or "severely limited" (inability to perform one or more basic work-  
17 related activities) in all categories of functioning. Tr. 499-502.

18 The ALJ noted several valid reasons for according Dr. Twe's extreme  
19 limitation findings "little weight" in this case. Tr. 516-517.

20 First, the ALJ determined Dr. Twe's limitation to sedentary work in 2011,  
21 Tr. 332, was primarily based on Plaintiff's temporary pregnancy condition, not a  
22 physical ailment. There is no notation of Dr. Twe performing a physical  
23 examination, and no other medical professional of record has limited Plaintiff to  
24 sedentary work. The Court agrees with the Commissioner that there is no support  
25 for Plaintiff being limited to sedentary exertional level work.

26 The ALJ next indicated Plaintiff's ability to be the primary caregiver for her  
27 young children greatly undermined Dr. Twe's opinion that Plaintiff was incapable  
28 of engaging in work activity. Tr. 516-517. The ALJ found that Plaintiff's

1 successful primary parenting of two small children, an emotionally demanding  
2 activity, suggested she did not have as severe emotional difficulty as assessed by  
3 Dr. Twe. Tr. 516. The ALJ explained that although childcare activity in the home  
4 does not generally involve going out in public or being around strangers, the record  
5 reflected that Plaintiff had been taking her daughter to therapy sessions and  
6 cooperating with medical personnel during those appointments which suggested  
7 Plaintiff had a greater ability to be in the public than alleged. Tr. 516. The ALJ  
8 further explained that Plaintiff's ability to organize, occupy and supervise her  
9 children's time required her to adhere to a schedule of basic care, make decisions  
10 and respond appropriately to unexpected scenarios such as illness, accidents and  
11 mood disturbances or misbehavior on the part of her children. Tr. 517. Plaintiff's  
12 demonstrated ability to care for her two young children was inconsistent with Dr.  
13 Twe's opinion regarding Plaintiff's mental functioning.

14 Next, the ALJ noted Plaintiff's activities of daily living were inconsistent  
15 with Dr. Twe's opinions. Tr. 516. Plaintiff reported daily bike riding, which  
16 required her to go outside of her home, and attending a church class on  
17 interpersonal boundaries. Tr. 395. Plaintiff's sister reported that Plaintiff would  
18 leave the house twice daily, go outside on her own, go shopping, and attend church  
19 and sporting events on a fairly regular basis, which involved going out in public  
20 and being around strangers. Tr. 272-273. The foregoing activities are inconsistent  
21 with the extreme limitations opined by Dr. Twe in this case.

22 The ALJ next found that Plaintiff's performance on mental status  
23 examinations and other objective medical evidence of record were not consistent  
24 with the marked to severe limitations assessed by Dr. Twe. Tr. 517. As noted by  
25 the ALJ, Tr. 517, mental status examinations revealed Plaintiff's thought content  
26 was appropriate, thought process was intact, judgment was fair, intellect was  
27 average, and there was no impairment of her cognition or memory, Tr. 343, 358. It  
28 was additionally noted that, on exam, Plaintiff's remote memory was okay, she



1 was able to carry out a three-step command with ease, she had no difficulty  
2 following conversation, and she was able to give appropriate, abstract explanation  
3 for common proverbs. Tr. 476. Finally, the ALJ indicated that after her pregnancy  
4 in 2013, Plaintiff denied having depression or anxiety and reported her moods were  
5 doing well. Tr. 782. The aforementioned medical examination findings and  
6 objective medical evidence of record are not consistent with the significant  
7 limitations assessed by Dr. Twe.

8 The ALJ also indicated that Dr. Twe's opinions were not fully consistent  
9 with Dr. Twe's own treatment notes. Tr. 517. Although Dr. Twe stated that  
10 Plaintiff had severe and long-term anxiety symptoms, her notes reflect that  
11 Plaintiff experienced an improvement in her symptoms. Tr. 517. For example, in  
12 May 2014, Plaintiff reported "doing OK" since Dr. Twe upped the dose of her  
13 Paxil. Tr. 778. Plaintiff also reported to Dr. Twe's office in November 2015 that  
14 her medications were working and she was doing "very well." Tr. 770. The  
15 treatment notes reflect findings by Dr. Twe that Plaintiff was alert, pleasant,  
16 cooperative, and appropriate. Tr. 767-781. In March 2014, Dr. Twe encouraged  
17 Plaintiff to try to at least work part-time. Tr. 779. As concluded by the ALJ, Dr.  
18 Twe's treatment notes and recommendation for Plaintiff to obtain part-time work  
19 are inconsistent with the marked to severe limitations assessed by Dr. Twe. Tr.  
20 571, 779.

21 Based on the foregoing, the Court finds that the ALJ provided specific,  
22 legitimate reasons that are supported by substantial evidence for according "little  
23 weight" to the significant limitations assessed by Dr. Twe in this case. The ALJ  
24 did not err with respect to her findings regarding Dr. Twe's opinions.

25 **B. Plaintiff's Symptom Testimony**

26 Plaintiff asserts the ALJ also erred by improperly rejecting Plaintiff's  
27 subjective complaints. ECF No. 14 at 12-15.

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1 It is the province of the ALJ to make credibility determinations. *Andrews*,  
2 53 F.3d at 1039. However, the ALJ's findings must be supported by specific  
3 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent  
4 affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's  
5 testimony must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d  
6 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).  
7 "General findings are insufficient: rather the ALJ must identify what testimony is  
8 not credible and what evidence undermines the claimant's complaints." *Lester*, 81  
9 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

10 In this case, the ALJ found Plaintiff's medically determinable impairments  
11 could reasonably be expected to cause the alleged symptoms; however, Plaintiff's  
12 statements concerning the intensity, persistence and limiting effects of these  
13 symptoms were not entirely consistent with the medical and other evidence of  
14 record. Tr. 514.

15 The ALJ first held that the objective medical evidence of record did not  
16 substantiate Plaintiff's allegations of disabling functional limitations. Tr. 514-515.

17 A lack of supporting objective medical evidence is a factor which may be  
18 considered in evaluating an individual's credibility, provided it is not the sole  
19 factor. *Bunnell v. Sullivan*, 347 F.2d 341, 345 (9th Cir. 1991); *see also Carmickle*  
20 *v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008) ("Contradiction  
21 with the medical record is a sufficient basis for rejecting the claimant's subjective  
22 testimony."); *Lingenfelter v. Astrue*, 504 F.3d 1028, 1040 (9th Cir. 2007) (in  
23 determining credibility, the ALJ may consider "whether the alleged symptoms are  
24 consistent with the medical evidence").

25 Despite Plaintiff's allegations of significant mental limitations, the ALJ  
26 found her performance on mental status examinations established she was capable  
27 of performing, at a minimum, unskilled routine and repetitive work. Tr. 514. As  
28 noted above, mental status examination findings revealed Plaintiff's thought

1 content was appropriate, thought process was intact, judgment was fair, intellect  
2 was average, and there was no impairment of her cognition or memory, Tr. 343,  
3 358, and further that Plaintiff's remote memory was okay, she was able to carry  
4 out a three-step command with ease, she had no difficulty following conversation,  
5 and she was able to give appropriate, abstract explanation for common proverbs,  
6 Tr. 476. It was also noted by the ALJ that Plaintiff did not exhibit an impairment  
7 of memory or intellectual functioning during her medication management  
8 examinations in late 2009, Tr. 426, 434, and she was able to engage in a  
9 cooperative manner with medical personnel, indicating she was capable of being  
10 around others, Tr. 357, 426, 434, 475. The ALJ additionally indicated that after  
11 her pregnancy in 2013, Plaintiff denied having depression or anxiety and reported  
12 her moods were doing well. Tr. 515, 782.

13 As determined by the ALJ, the objective medical evidence of record does  
14 not support the disabling limitations alleged by Plaintiff in this case.

15 The ALJ next determined Plaintiff reported an improvement in her  
16 symptoms with medication. Tr. 515.

17 The effectiveness of medication in alleviating pain and other symptoms is a  
18 relevant factor to consider in evaluating the severity of a claimant's symptoms. 20  
19 C.F.R. § 416.929(c)(3)(iv); *see e.g. Morgan v. Comm'r of Social Sec. Admin.*, 169  
20 F.3d 595, 600 (9th Cir. 1999) (an ALJ may properly rely on a report that a  
21 plaintiff's mental symptoms improved with the use of medication); *Odle v.*  
22 *Heckler*, 707 F.2d 439, 440 (9th Cir. 1983) (noting impairments that are controlled  
23 by treatment cannot be considered disabling).

24 As indicated above, in addition to denying depression and anxiety and  
25 reporting her moods as doing well in 2013, Tr. 782, Plaintiff indicated in May  
26 2014 that she was "doing OK" since Dr. Twe upped the dose of her Paxil. Tr. 778.  
27 Plaintiff also reported to Dr. Twe's office in November 2015 that her medications  
28 were working and she was doing "very well." Tr. 770.

1 This noted improvement of symptoms on medication is relevant to the ALJ's  
2 assessment of Plaintiff's subjective complaints.

3 The ALJ next noted that Plaintiff had a history of limited mental health  
4 treatment attendance with various no-shows and cancellations. Tr. 515.

5 In assessing a claimant's credibility, an ALJ properly relies upon  
6 "unexplained or inadequately explained failure to seek treatment or to follow a  
7 prescribed course of treatment." *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th  
8 Cir. 2008) (quoting *Smolen*, 80 F.3d at 1284); *Fair*, 885 F.2d at 603. "[I]f the  
9 frequency or extent of the treatment sought by an individual is not comparable with  
10 the degree of the individual's subjective complaints, or if the individual fails to  
11 follow prescribed treatment that might improve symptoms, we may find the  
12 alleged intensity and persistence of an individual's symptoms are inconsistent with  
13 the overall evidence of record." SSR 16-3p. Moreover, an "unexplained, or  
14 inadequately explained, failure to seek treatment may be the basis for an adverse  
15 credibility finding unless one of a 'number of good reasons for not doing so'  
16 applies." *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007).

17 Despite Plaintiff's allegations of severely disability mental health symptoms,  
18 the record in this case is replete with Plaintiff's medical appointment cancellations  
19 and no-shows. Furthermore, the evidence demonstrates that Plaintiff engaged in  
20 minimal mental health treatment overall. At the September 2013 administrative  
21 hearing, Plaintiff testified she had not attended counseling for about 18 months, Tr.  
22 72, and, at the May 2016 administrative hearing, that she had not seen a therapist  
23 for her PTSD since 2011, Tr. 560. Plaintiff stated she had been managing her  
24 symptoms by visiting her family practitioner, Dr. Twe, only once every three  
25 months. Tr. 561. As noted by the ALJ, while Central Washington Comprehensive  
26 Mental Health offered Plaintiff home visits for treatment, Tr. 409, 411, there was  
27 no indication Plaintiff ever pursued those services. Tr. 515.

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1 It was reasonable for the ALJ to conclude that the frequency of Plaintiff's  
2 treatment was inconsistent with the level of Plaintiff's complaints in this case.  
3 SSR 16-3p. As such, the ALJ did not err by relying, in part, upon Plaintiff's  
4 minimal mental health treatment in concluding Plaintiff had limited credibility.

5 The ALJ is responsible for reviewing the evidence and resolving conflicts or  
6 ambiguities in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.  
7 1989). It is the role of the trier of fact, not this Court, to resolve conflicts in  
8 evidence. *Richardson*, 402 U.S. at 400. The Court has a limited role in  
9 determining whether the ALJ's decision is supported by substantial evidence and  
10 may not substitute its own judgment for that of the ALJ even if it might justifiably  
11 have reached a different result upon *de novo* review. 42 U.S.C. § 405(g). After  
12 reviewing the record, the Court finds that the ALJ provided clear and convincing  
13 reasons, which are fully supported by the record, for discounting Plaintiff's  
14 subjective complaints. Accordingly, the ALJ did not err by finding Plaintiff's  
15 allegations were not entirely credible in this case.

### 16 **C. Step Five**

17 Plaintiff contends that the ALJ also erred by relying on the vocational  
18 expert's testimony in response to a hypothetical that was not supported by the  
19 weight of the record evidence. ECF No. 14 at 15-16.

20 As determined above, the ALJ did not err by according "little weight" to the  
21 extreme limitations assessed by Dr. Twe in this case or by finding Plaintiff's  
22 subjective complaints less than fully credible. *See Supra*. Consequently, the  
23 weight of the record evidence in this case supports the ALJ's ultimate RFC  
24 determination.

25 The ALJ determined Plaintiff could perform work at all exertional levels  
26 with certain nonexertional limitations. Tr. 513-514. At the administrative hearing  
27 held on May 4, 2016, the vocational expert testified that with the restrictions  
28 assessed by the ALJ, Plaintiff retained the capacity to perform a significant number

1 of jobs existing in the national economy, including the positions of industrial  
2 cleaner, kitchen helper, and laundry worker II. Tr. 576-577. Since the vocational  
3 expert's testimony was based on a proper RFC determination by the ALJ,  
4 Plaintiff's Step Five argument, ECF No. 14 at 15-16, is without merit.

### 5 **CONCLUSION**

6 Having reviewed the record and the ALJ's findings, the Court finds the  
7 ALJ's decision is supported by substantial evidence and free of legal error.

8 Accordingly, **IT IS ORDERED:**

9 1. Defendant's Motion for Summary Judgment, **ECF No. 15**, is  
10 **GRANTED.**

11 2. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is **DENIED.**

12 The District Court Executive is directed to file this Order and provide a copy  
13 to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant  
14 and the file shall be **CLOSED.**

15 DATED January 25, 2018.

A handwritten signature in black ink, appearing to read "M", is positioned above the judge's name.

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JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE